**UNITED GOLD HOLDINGS SDN. BHD.**

**v.**

**MALAYSIA MINING CORP. BHD. & ANOR.**

HIGH COURT MALAYA, KUALA LUMPUR
VC GEORGE J
[CIVIL SUIT NO. C 8163 OF 1985]
10 FEBRUARY 1987

***CIVIL PROCEDURE:*** *Injunction - Whether any basis to plaintiff's application - Whether able to meet undertaking in damages.*

The plaintiff by way of writ, sought specific performance for sale of shares against the 1st defendant. The plaintiff issued an *ex parte* summons-in-chambers seeking an injunction against the 1st defendant from disposing off or dealing with 954,283 shares held by the 1st defendant until the disposal of the action. When the application came up for hearing, it was adjourned to another date to be heard *inter partes*.

**Held**:

**[1]** Everything turned on whether the plaintiff could by the purchase of those shares from the 1st defendant wrest control of the company or not. Since the Court was not satisfied that the plaintiff in fact had the 30% shares of the company, the basis for the plaintiff's claim for an injunction failed.

**[2]** Apart from that, the plaintiff had not been able to demonstrate that they could meet the undertaking in damages.

*[Application dismissed with costs.]*

*For the plaintiff/applicant - Mohd. Anuar bin Abdul Ghani; M/s. Sri Ram, Zulkifly & Kumar*
*For the 1st defendant/respondent - Haji Sulaiman bin Abdullah; M/s. Zain & Co.*

**JUDGMENT**

**VC George J:**

The writ herein was caused to be issued on 6 December 1985 by the plaintiff seeking specific performance of an alleged contract for the sale of 954,283 shares in Kamunting Tin Dredging (M) Bhd. - KTD, a public company listed on the Stock Exchange of Singapore and Kuala Lumpur, as against the 1st defendant who entered an appearance thereto on 20 February 1986. On 7 March 1986 the plaintiff caused to issue an *ex parte* summons-in-chambers which is encl. (6) in the Court file seeking an injunction against the 1st defendant from disposing off or dealing with the 954,283 shares in KTD said to be held by the 1st defendant until the disposal of the action. This application was supported by the affidavit of one Dato Koh Kim Chai, a director of the plaintiff company.

The application came up before me on 14 March 1986. I directed that it be heard *inter partes* and adjourned it. However an interim injunction in the terms sought was given pending disposal of the application *inter partes*.

Upon hearing the matter *inter partes* the injunction sought was refused.

*a* By the said affidavit [encl. (5) in the Court file] in support of the *ex parte* application the Court was informed that the plaintiff had purchased on 28 January 1983 1,200,000 shares in KTD which represented 30% of the issued shares of that company and that it had thereby become the largest single shareholder of KTD. Further the affidavit sought to and gave the Court the impression that at the time of the filing of the application for the *ex parte* injunction the plaintiff applicant continued to be the owner of those 1,200,000 shares.

*b* The deponent of the affidavit went on to say that the plaintiff wanted to increase its shareholding in KTD to 51% of the issued shares with a view to taking over the control and management of the KTD for which purpose negotiations were commenced between the plaintiff and the 1st defendant for the sale of its holding of 23% of shares in KTD and eventually, according to the deponent of the affidavit, there was a concluded contract for such sale evidenced by a letter of offer dated 12 May 1984 written by the 2nd defendant as agent of *c* the 1st defendant to one Hassim bin Baba who had been nominated by the plaintiff to take up the shares on behalf of the plaintiff and Hassim's letter of acceptance of the offer dated 18 May 1984 which letter of acceptance Dato' Koh had, according to para. 14(b) of the said affidavit, personally delivered to the 2nd defendant who, according to him, had acknowledged receipt of the same.

*d* The deponent went on to state that the conduct of the 1st defendant "manifests a clear intention to renege on the agreement" and that he had learnt that the 1st defendant was about to sell those shares to others. Then comes this sentence at para. 17 of the affidavit:

> Unless restrained from disposing off the KTD shares by sale or otherwise, the plaintiff will suffer irreparable loss in that there are no other single shareholders in KTD having 23% shares who could confer control on the plaintiff.

*e* On those facts when I read the affidavit in chambers at the *ex parte* hearing I was inclined to agree with the views expressed in para. 17. However, in para. 20 of the affidavit Dato Koh refers to various facts which seemed unconnected to what was stated earlier but which he states is connected. That para. 20 gave the impression that there was more in the matter than met the eye and hence my direction that the matter be heard *inter partes*.

*f* Further affidavits were filed by both sides on reading which it became obvious that there had not been frank and full disclosure by the plaintiff. The contention that the plaintiff owned 30% of the shares became more than dubious. There was clearly an attempt to suppress the views expressed by Datuk Gunn Chit Tuan J in his judgment delivered in civil suit C 3485 of 1985 in what was obviously a related matter. As to the way para. 20, in encl. (5) which is the first affidavit filed in support of the application for the injunction was presented, I cannot *g* but agree with what Baharuddin bin Ma'arof says in para. 7 of his affidavit in reply [encl. (9)] that it amounted to no more than a ritualistic obeisance to the strict demands of full disclosure, which is of course not good enough. What is required is a frank and full disclosure.

At the end of the day I was left with doubts as to whether the plaintiff had in fact bought *h* the 30% shares and more importantly whether at the material time it continued to own those shares.

Everything turned on whether the plaintiff could by the purchase of those 23% of the shares from the 1st defendant wrest control of KTD or not. Since I was not at all satisfied that the plaintiff in fact had the 30% KTD shares the basis for the plaintiff's claim for an injunction failed.

*i*

Apart from that I was far from satisfied that the undertaking in damages was meaningful. The plaintiff had not been able to demonstrate that they could meet such an undertaking.

The *ex parte* injunction was deemed dissolved when the application *inter partes* came on for hearing. The plaintiff's application was dismissed with costs and consequential orders in respect of the *ex parte* injunction were made.

Also found at [1987] 2 CLJ 272